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Attorneys for Debtor
 ComUnity Lending, Incorporated

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

In re:)	
)	
COMUNITY LENDING, INCORPORATED, A	)	Case No. 5:08-CV-00201-JW
CALIFORNIA CORPORATION)	
	)	Date: April 7, 2008
Debtor.	)	Time: 9:00 a.m.
	)	Place: United States District Court
5671 Santa Teresa Blvd, Suite 201	)	280 S. First Street, Courtroom 8, 4 th Flr.
San Jose, CA 95123	)	San Jose, CA 95113
	)	Judge: Honorable James Ware
Employer's Tax ID No.: 94-2673933)	
)	

**REQUEST TO TAKE JUDICIAL NOTICE IN SUPPORT OF MEMORANDUM IN OPPOSITION OF
 MOTION FOR WITHDRAWAL OF REFERENCE OF ADVERSARY PROCEEDING**

Pursuant to Federal Rule of Evidence 201, Debtor in Possession ComUnity Lending, Incorporated (the “Debtor” or the “Company”) hereby requests that this Court take judicial notice of the contents of the following pleadings on file in the adversary proceeding:

1. The Stipulation Re Plan Benefits filed on January 15, 2008 in Adversary Proceeding No. 08-5006-MM, a copy of which is attached hereto as **Exhibit “A”** for the Court’s convenience.
2. The Order Approving Stipulation Re Plan Benefits filed on January 16, 2008 in Adversary Proceeding No. 08-5006-MM, a copy of which is attached hereto as **Exhibit “B”** for the Court’s convenience.

1
2 Dated: March 14, 2008

MURRAY & MURRAY
A Professional Corporation

3
4 By: /s/ Robert A. Franklin
Robert A. Franklin
5 Attorneys for Debtor ComUnity Lending,
Incorporated
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15 Attorneys for Debtor
16 ComUnity Lending, Incorporated

17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

19 In re:

20 COMUNITY LENDING, INCORPORATED, A
21 CALIFORNIA CORPORATION

22 Debtor.

23 5671 Santa Teresa Blvd, Suite 201
24 San Jose, CA 95123

25 Employer's Tax ID No.: 94-2673933

26 Case No. 5:08-CV-00201-JW

27 EXHIBIT "A" To

28 REQUEST TO TAKE JUDICIAL NOTICE IN SUPPORT OF MEMORANDUM IN OPPOSITION OF
MOTION FOR WITHDRAWAL OF REFERENCE OF ADVERSARY PROCEEDING

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Attorneys for Plaintiffs
Mai Christina Pham, John Pham, Mai Nguyen,
Hung Perry Nguyen, and Joyce Freeman

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re	)	Case No. 08-50030 (MM)
COMUNITY LENDING, INCORPORATED, a	)	Chapter 11
California corporation,)	
Debtor.)	

MAI CHRISTINA PHAM, JOHN PHAM, MAI	)	Adv. Proc. No. 08-05006
NGUYEN, HUNG PERRY NGUYEN, and JOYCE	)	STIPULATION RE: PLAN BENEFITS
FREEMAN,)	
Plaintiffs,)	
vs.)	
COMUNITY LENDING, INCORPORATED, a)	
California corporation, and Does 1 through 10,)	
inclusive,)	
Defendants.)	

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiffs Mai Christina Pham, John Pham, Mai Nguyen, Hung Perry Nguyen (collectively, the "Original Plaintiffs"), and Joyce Freeman (together with the Original Plaintiffs, "Plaintiffs"), and defendant/debtor and debtor

STIPULATION RE: PLAN BENEFITS

1 in possession ComUnity Lending, Incorporated ("Company" or "Debtor", and together with the
2 Plaintiffs, the "Parties"), through their respective undersigned counsel, as follows:

3 WHEREAS, on October 24, 2007, the Original Plaintiffs filed a lawsuit against the
4 Company in the U.S. District Court for the Northern District of California, San Jose Division
5 ("District Court"), styled *Pham, et al., v. ComUnity Lending, Inc., et al.*, Case No. C07-05436 JW
6 (HRL) ("District Court Litigation"); and

7 WHEREAS, in the Complaint for Breach of Contract, Declaratory and Injunctive Relief
8 ("Original Complaint") they filed in the District Court Litigation, the Original Plaintiffs
9 maintained, *inter alia*, that as former employees of the Company and participants in the Company's
10 Non-Qualified Deferred Compensation Plan ("Plan"), and pursuant to the Plan's provisions, they
11 should have been paid, in the aggregate, in excess of \$3,800,000 on August 10, 2007, the date on
12 which they maintain the Company terminated the Plan; and

13 WHEREAS, in the District Court Litigation, the Company generally denied the allegations
14 contained in the Original Complaint, and maintained that because the Company was insolvent, and
15 remains insolvent, the benefits under the Plan (collectively, the "Plan Benefits") could not be paid
16 to the Plan's participants ahead of general creditors of the Company pursuant to the Plan's
17 provisions; and

18 WHEREAS, the Plaintiffs dispute the Company's contentions set forth in the immediately
19 preceding paragraph; and

20 WHEREAS, on December 6, 2007, the District Court entered an Order Granting Plaintiffs'
21 Application for a Writ of Attachment "to secure the sum of \$3,835,119" in the District Court
22 Litigation, a true and correct copy of which is attached hereto as Exhibit 1; and

23 WHEREAS, on December 6, 2007, the District Court issued a Writ of Attachment in the
24 District Court Litigation, a true and correct copy of which is attached hereto as Exhibit 2; and

25 WHEREAS, the Debtor represents that at the time of the levy referred to in the following
26 paragraph, it maintained two (2) separate interest-bearing accounts containing only the Plan
27 Benefits in the respective amounts of approximately \$4.7 million ("Account No. 1") and \$227,000
28

1 ("Account No. 2") (the monies in Account Nos. 1 and 2, together with accrued and accruing
2 interest thereon, are collectively referred to herein as the "Segregated Funds"); and

3 WHEREAS, on December 28, 2007, Plaintiffs effected a levy in the amount of \$3,835,119
4 on Account No. 1 pursuant to the Writ of Attachment issued by the District Court (the "Attachment
5 Lien"); and

6 WHEREAS, on January 4, 2008, the Company commenced its bankruptcy case; and

7 WHEREAS, on January 7, 2008, Plaintiffs commenced the above-captioned adversary
8 proceeding by filing a Verified Complaint for Breach of Contract, Declaratory Relief, and
9 Injunctive Relief (the "Adversary Proceeding Complaint"); and

10 WHEREAS, Plaintiffs maintain in the Adversary Proceeding Complaint, *inter alia*, that at
11 the time the Plan's trustee distributed Plaintiff Joyce Freeman's respective Plan Benefits to the
12 Company in September 2007, Ms. Freeman's Plan accounts had an aggregate balance of
13 \$407,893.68; and

14 WHEREAS, the Debtor anticipates that it will file a pleading disputing the Plaintiffs'
15 contentions set forth in the Adversary Proceeding Complaint; and

16 WHEREAS, the Plaintiffs and the Debtor have agreed to enter into this Stipulation;

17 NOW, THEREFORE, Plaintiffs and the Debtor stipulate and agree as follows:

18 1. Except as otherwise ordered by the Bankruptcy Court, and subject to Paragraph 2 below,
19 until the earlier of (i) the entry of a stipulation and order settling and dismissing with prejudice the
20 above-captioned adversary proceeding, and (ii) the entry of a final, nonappealable order
21 adjudicating the merits of Plaintiffs' claims in the Adversary Proceeding Complaint, the Debtor:

22 (a) will maintain the Segregated Funds currently held in Account No. 1 in a separate
23 and segregated DIP account ("Segregated DIP Account No. 1"); and

24 (b) will maintain the Segregated Funds currently held in Account No. 2 in a separate
25 and segregated DIP account ("Segregated DIP Account No. 2"); and

26 (c) will not commingle, use, transfer, pledge, encumber, grant a security interest in, or
27 in any other manner dispose of or hypothecate any of the Segregated Funds in Segregated DIP
28 Account No. 1; and

1 (d) will not commingle, use, transfer, pledge, encumber, grant a security interest in, or
2 in any other manner dispose of or hypothecate any of the Segregated Funds in Segregated DIP
3 Account No. 2.

4 2. The Plaintiffs and the Debtor will take such additional actions as are reasonably
5 necessary and appropriate to effectuate the provisions of this Stipulation including, without
6 limitation, obtaining the release of the Attachment Lien under the provisions of Cal. Code Civ.
7 Proc. §§ 493.030(b) and 493.040.

8 3. The Parties are entering into this Stipulation without prejudice to their respective rights,
9 claims, causes of action, and defenses in the above-captioned adversary proceeding and bankruptcy
10 case.

11 Dated: January 11, 2008

MURRAY & MURRAY
A Professional Corporation

12
13 By: /s/Robert A. Franklin
14 Robert A. Franklin

15 Attorneys for Debtor
16 ComUnity Lending, Incorporated

17 Dated: January 11, 2008

LINER YANKELEVITZ
SUNSHINE & REGENSTREIF LLP

18
19 By: /s/ Ronald S. Kravitz
20 Ronald S. Kravitz

21 Attorneys for Plaintiffs
22 Mai Christina Pham, John Pham, Mai Nguyen,
23 Hung Perry Nguyen, and Joyce Freeman
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EXHIBIT 1

Case 5:07-cv-05436-JW Document 30 Filed 12/06/2007 Page 1 of 4

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Mai Christina Pham, et al.,

NO. C 07-05436 JW

Plaintiffs,

**ORDER GRANTING PLAINTIFFS'
APPLICATION FOR A WRIT OF
ATTACHMENT**

v.

ComUnity Lending Inc.,

Defendant.

Presently before the Court is Plaintiffs' Application for a Writ of Attachment. (See Docket Item No. 10.) The Court conducted a hearing on December 4, 2007. For the reasons stated on the record, the Court GRANTS Plaintiff's application for a writ of attachment.

Plaintiffs in federal court may invoke whatever remedies are provided under the law of the state in which the federal court is located for "seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action." Fed. R. Civ. P. 64; Reebok Int'l. Ltd. v. Marnatech Enters., Inc., 970 F.2d 552, 558 (9th Cir. 1992). These remedies may include a writ of attachment. Fed. R. Civ. P. 64. The effect of Rule 64 is to incorporate state law to determine the availability of prejudgment remedies for the seizure of property to secure satisfaction of a judgment ultimately entered. Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 of Alameda Co., 415 U.S. 423, 436 n. 10 (1974). Thus, the Court examines Plaintiffs' application under California law. In California, the procedures

Case 5:07-cv-05436-JW Document 30 Filed 12/06/2007 Page 2 of 4

1 and grounds for obtaining orders for prejudgment writs of attachment are governed by California
2 Civil Procedure Code §§ 481.010-493.060.

3 Attachment "is a remedy by which a plaintiff with a contractual claim to money (not a claim
4 to a specific item of property) may have various items of a defendant's property seized before
5 judgment and held by a levying officer for execution after judgment." Waffer International
6 Corporation v. Khorsandi, 69 Cal. App. 4th 1261, 1271 (1999). An attachment may be issued "only
7 in an action on a claim or claims for money, each of which is based upon a contract, express or
8 implied, where the total amount of the claim or claims is a fixed or readily ascertainable amount not
9 less than five hundred dollars." Cal. Civ. Proc. Code § 483.010(a). Attachment lies on any claim
10 against a partnership or corporation or on claims against individuals that arise out of the conduct by
11 the individual of a trade, business, or profession. § 483.010(a) & (c).

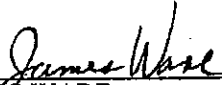
12 Based on the papers submitted to date and arguments by counsel at the hearing, the Court
13 finds that Plaintiffs have met their burden to establish grounds for relief. Plaintiffs have shown that:
14 (1) the claim upon which the attachment is based is one upon which an attachment may be issued;
15 (2) the attachment is not sought for a purpose other than recovery of the claim upon which the
16 attachment is based; (3) the amount to be secured by the attachment is greater than zero; (4) the
17 property sought to be attached is not exempt from attachment; and (5) Plaintiffs will suffer great or
18 irreparable injury (within the meaning of Section 485.010) if issuance of the order is delayed until
19 the matter can be heard on notice. Cal. Civ. Proc. Code §§ 484.090(a); 485.220.

20 The Court orders that Plaintiffs have the right to attach Defendant ComUnity Lending, Inc.'s
21 property in the amount of \$3,835,119. The Clerk shall issue a writ of attachment for \$3,835,119, for
22 the deposit account identified by Defendant's President, Richard Couch, at the Court's November
23 20, 2007 hearing. (See Docket Item No. 24.) It is further ordered that Defendant or Mr. Couch shall
24 disclose to the levying officer 1) the financial institution at which the account described above is
25 held, and 2) the account number of said account.

Case 5:07-cv-05436-JW Document 30 Filed 12/06/2007 Page 3 of 4

1 The parties shall appear for the Case Management Conference presently scheduled for
2 **February 25, 2008 at 10 A.M.** Pursuant to the Civil Local Rules of Court, the parties shall meet
3 and confer and file a Joint Case Management Conference by February 15, 2008.

4
5 Dated: December 6, 2007


JAMES WARE
United States District Judge

United States District Court
For the Northern District of California

EXHIBIT 2

Case 5:07-cv-05436-JW Document 31 Filed 12/06/2007 Page 1 of 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Mai Christina Pham, et al.,

NO. C 07-05436 JW

Plaintiffs,

WRIT OF ATTACHMENT

v.

ComUnity Lending Inc.,

Defendant.

Pursuant to the Court's December 6, 2007 Order Granting Plaintiffs' Application for a Writ of Attachment, the Court orders as follows:

To any U.S. Marshall:

This writ is to attach property of

ComUnity Lending, Inc.
610 Jarvis Drive
Morgan Hill, CA 95037

and the attachment is to secure \$3,835,119.

You are directed to attach the following property:

A deposit account that shall be identified by Defendant ComUnity, Inc. or Defendant's President, Richard Couch, upon levy of this writ. Defendant and Mr. Couch have been ordered to disclose the financial institution at which the account is held and the account number of the account to you.

Dated: December 6, 2007

Richard W. Wieking, Clerk

By: Elizabeth C. Garcia
Elizabeth Garcia
Courtroom Deputy

Case 5:07-cv-05436-JW Document 31 Filed 12/06/2007 Page 2 of 2

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED**
2 **TO:**

3 Robert Anthony Franklin rfranklin@murraylaw.com
4 Ronald Scott Kravitz Rkravitz@LinerLaw.com
5 Teri Thuy Ngoc Pham tpham@linerlaw.com

6 **Dated: December 6, 2007**

Richard W. Wieking, Clerk

7 **By: /s/ JW Chambers**
8 **Elizabeth Garcia**
9 **Courtroom Deputy**

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United States District Court
For the Northern District of California

1 JOHN WALSHE MURRAY (074823)
2 ROBERT A. FRANKLIN (091653)
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4 JENNY L. FOUNTAIN (226241)
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14 Email: jlfountain@murraylaw.com

15 Attorneys for Debtor
16 ComUnity Lending, Incorporated

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

19 In re:

20 COMUNITY LENDING, INCORPORATED, A
21 CALIFORNIA CORPORATION

22 Debtor.

23 5671 Santa Teresa Blvd, Suite 201
24 San Jose, CA 95123

25 Employer's Tax ID No.: 94-2673933

26 Case No. 5:08-CV-00201-JW

27 EXHIBIT "B" TO

28 REQUEST TO TAKE JUDICIAL NOTICE IN SUPPORT OF MEMORANDUM IN OPPOSITION OF
MOTION FOR WITHDRAWAL OF REFERENCE OF ADVERSARY PROCEEDING

Entered on Docket

January 16, 2008

GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



The following constitutes
the order of the court. Signed January 16, 2008

Marilyn Morgan
Marilyn Morgan
U.S. Bankruptcy Judge

1 Ronald S. Kravitz (SBN 129704)
rkravitz@linerlaw.com
2 George H. Kalikman (SBN 147382)
gkalikman@linerlaw.com
3 Matthew Borden (SBN 214323)
mborden@linerlaw.com
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Facsimile: (415) 489-7701

7 Attorneys for Plaintiffs
8 Mai Christina Pham, John Pham,
Mai Nguyen, Hung Perry Nguyen
9 and Joyce Freeman

10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 In re
14 COMUNITY LENDING, INCORPORATED, a
15 California corporation,
16 Debtor.

) Case No. 08-50030 MM

) Chapter 11

17 MAI CHRISTINA PHAM, JOHN PHAM, MAI
18 NGUYEN, HUNG PERRY NGUYEN, AND JOYCE
FREEMAN,

) Adversary Proceeding No. 08-5006 MM

19 Plaintiffs,

) [PROPOSED] ORDER APPROVING
STIPULATION RE: PLAN BENEFITS

20 vs.

21 COMUNITY LENDING, INCORPORATED, a
22 California corporation, and DOES 1 through 10,
23 inclusive,

24 Defendants.

Case No. 08-50030/Adv. Proc. No. 08-5006 MM

[PROPOSED] ORDER APPROVING STIPULATION RE: PLAN BENEFITS

0036012/00178568 Case No. 08-05006 Doc #: 10 Filed: 01/16/2008 Page 1 of 4

EXHIBIT B

1 Upon consideration of the Stipulation Re: Plan Benefits dated January 14, 2008
 2 ("Stipulation"), which plaintiffs Mai Christina Pham, John Pham, Mai Nguyen, Hung Perry
 3 Nguyen, and Joyce Freeman (collectively, "Plaintiffs") and defendant/debtor and debtor in
 4 possession ComUnity Lending, Incorporated ("Debtor") have entered into, by and through their
 5 respective counsel, and good cause appearing therefor, it is hereby

6 ORDERED that the Stipulation is APPROVED; and it is further

7 ORDERED that:

8 1. Except as otherwise ordered by the Court, and subject to Paragraph 2 below, until the
 9 earlier of (i) the entry of a stipulation and order settling and dismissing with prejudice the above-
 10 captioned adversary proceeding, and (ii) the entry of a final, nonappealable order adjudicating the
 11 merits of Plaintiffs' claims in the Adversary Proceeding Complaint,¹ the Debtor:

12 (a) will maintain the Segregated Funds currently held in Account No. 1 in a separate
 13 and segregated DIP account ("Segregated DIP Account No. 1"); and

14 (b) will maintain the Segregated Funds currently held in Account No. 2 in a separate
 15 and segregated DIP account ("Segregated DIP Account No. 2"); and

16 (c) will not commingle, use, transfer, pledge, encumber, grant a security interest in, or
 17 in any other manner dispose of or hypothecate any of the Segregated Funds in Segregated DIP
 18 Account No. 1; and

19 (d) will not commingle, use, transfer, pledge, encumber, grant a security interest in, or
 20 in any other manner dispose of or hypothecate any of the Segregated Funds in Segregated DIP
 21 Account No. 2.

22 2. The Plaintiffs and the Debtor will take such additional actions as are reasonably
 23 necessary and appropriate to effectuate the provisions of this Stipulation including, without
 24 limitation, obtaining the release of the Attachment Lien under the provisions of Cal. Code Civ.
 25 Proc. §§ 493.030(b) and 493.040.

26
 27 ¹ Unless otherwise defined herein, capitalized terms have the meanings ascribed to them in the
 28 Stipulation.

**** END OF ORDER. ****

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Attorneys for Defendant-Debtor ComUnity Lending, Incorporated

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 Email: jlfountain@murraylaw.com

Attorneys for Debtor
 ComUnity Lending, Incorporated

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

In re:)	
)	
COMUNITY LENDING, INCORPORATED, A	)	Case No. 5:08-CV-00201-JW
CALIFORNIA CORPORATION)	
	)	Date: April 7, 2008
Debtor.	)	Time: 9:00 a.m.
	)	Place: United States District Court
5671 Santa Teresa Blvd, Suite 201	)	280 S. First Street, Courtroom 8, 4 th Flr.
San Jose, CA 95123	)	San Jose, CA 95113
	)	Judge: Honorable James Ware
Employer's Tax ID No.: 94-2673933)	
)	

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA)
) ss.
 COUNTY OF SANTA CLARA)

I am a citizen of the United States and employed in Santa Clara County. I am over the age of eighteen years and not a party to the above-entitled action; my business address is 19400 Stevens Creek Boulevard, Suite 200, Cupertino, CA 95014-2548.

On March 14, 2008, at my place of business, I served a true and correct copy of the following document(s):

1. **REQUEST TO TAKE JUDICIAL NOTICE IN SUPPORT OF MEMORANDUM IN OPPOSITION OF MOTION FOR WITHDRAWAL OF REFERENCE OF ADVERSARY PROCEEDING.**

1 in the manner indicated below:

2 ☒ By mail by enclosing said document(s) in an envelope and depositing the sealed envelope with
3 the United States Postal Service with the postage fully prepaid, addressed as follows:

4 Ronald S. Kravitz, George H. Kalikman,
5 Matthew Borden
6 Liner Yankelevitz Sunshine & Regenstreif
7 LLP
8 199 Fremont Street, 20th Floor
9 San Francisco, CA 94105-2255

10 ☐ By facsimile transmission sending a true copy of the said document(s) to the person(s)
11 indicated below to the following receiving station(s):

12 ☐ By overnight delivery depositing the said document(s) in a sealed overnight delivery envelope,
13 designated for overnight delivery, with all delivery charges prepaid, with an authorized
14 representative addressed as follows:

15 ☐ By hand delivery personally delivering or arranged to have personally delivered the said
16 document(s) to the person(s) indicated below in a manner provided by law, by leaving the said
17 document(s) at the office(s) or usual place(s) of business, during usual business hours, of the
18 said person(s) with a clerk or other person who was apparently in charge thereof and at least
19 18 years of age, who was informed of the contents (as indicated):

20 ☐ By e-mail transmission sending a true copy of the said document(s) to the person(s) indicated
21 below:

22 This Certificate was executed on March 14, 2008 at Cupertino, Santa Clara County,
23 California. I declare under penalty of perjury that the foregoing is true and correct.

24 /s/ Priscilla Teague
25 Priscilla Teague